

REMARKS

Applicant has carefully reviewed the Office Action mailed April 23, 2007. In response to the Office Action, Applicant has amended claims 28, 38, 41, 55, and 58. By way of this amendment, no new matter has been added. Claims 1-27 were previously cancelled. Accordingly, claims 28-61 remain pending in this application. At least for the reasons set forth below, Applicant respectfully traverses the foregoing rejections.

As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future. Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicant expressly does not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03. Applicant respectfully requests reconsideration of the present application in view of the above amendment, and the following remarks.

Drawings

The Examiner has rejected the drawings for allegedly failing to show every feature specified in the claims. 37 CFR 1.83 provides:

- (a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box). In addition, tables and sequence listings that are included in the specification are, except for applications filed under 35 U.S.C. 371, not permitted to be included in the drawings. (emphasis added).

Applicants note that paragraph [0021] recites that the “transducer means may comprise an electrical switch, which may be a potentiometer.” Further, the illustrative embodiment of FIG. 1 illustrates a switch 80. Therefore, the switch 80 shown in FIG. 1, illustrates sufficient detail to comply with 37 CFR 1.83 (a). Accordingly, reconsideration and withdrawal of the objection to the drawings is respectfully requested.

Claim Rejections – 35 U.S.C. § 112

Claims 30-32 and 34-40 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Further, the Examiner asserts that structure of these claims is not shown in the drawings. Applicant respectfully traverses the rejection.

Applicants note that, as detailed above, the drawings illustrate a representation of the recitations of claims 30-32 and 34-40. Further, paragraphs [0021] – [0025] and [0070] – [0072] describe these recitations. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claim Rejections – 35 U.S.C. § 102

Claims 28-30, 33-48, and 50-61 were rejected under 35 U.S.C. 102(b) as being anticipated by *Jester*, US Patent No. 4,561,325. Applicant respectfully traverses the rejection.

To anticipate a claim, the reference must teach every element of the claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant notes that independent claim 28 positively recites “the pivoting member includes a generally cylindrical outer surface portion, the retaining cup includes a generally cylindrical inner surface portion, and wherein the inner surface portion guides along at least a portion of the outer surface portion as the lever pivots relative to the housing.” Further,

independent claim 41 positively recites “the pivoting member includes a generally cylindrical outer surface portion having a detent formed therein, wherein the detent is defined, at least in part, by a detent surface; and a resilient member providing resistance to displacement of said lever in at least one of said positions, wherein the resilient member contacts the detent surface as the resilient member is displaced to provide the resistance.” Independent claim 55 positively recites “said lever position indication member being actuated by a portion of said pivoting member that extends radially from a pivot center of the pivot member.” Support for these claim amendments may be found, at least, in paragraphs [0045], [0048], [0072] and FIGS. 1-5.

In contrast, Jester does not teach the recitations of independent claims 28, 41, and 55. Specifically, Jester teaches a retaining pin 98 that permits the shift lever 94 of Jester to pivot. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claim Rejections – 35 U.S.C. § 103

Claims 31-32, and 49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jester*. Applicant respectfully traverses the rejection.

"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j).

The remarks presented above with respect to the §102 rejection are equally applicable here. Specifically, the inadequacy of Jester to teach every element of independent claims 28 and 41 is also fatal to the Examiner's §103 rejection. Furthermore, dependent claims, 31-32, and 49, being dependent upon allowable independent claims 28 and 41, are patentable at least by being dependent on an allowable base claim. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Application No.: 10/519,026
Amendment dated July 28, 2008
Reply to Office Action mailed April 28, 2008

Docket No.: 65856-0069

Conclusion

In view of the above amendment and remarks, the pending application is in condition for allowance. If, however, there are any outstanding issues that can be resolved by telephone conference, the Examiner is earnestly encouraged to telephone the undersigned representative.

It is believed no fees are due with this response. However, if any fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge our Deposit Account No. 18-0013, under Order No. 65856-0069 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. §1.136 is hereby made, the fee for which should also be charged to this Deposit Account.

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Respectfully submitted,

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